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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LEE TARTRE et al.,

Plaintiffs and Appellants,

v.

CITY OF POWAY et al.,

Defendants and Respondents.

D055225

(Super. Ct. No. 37-2008-00081870-
CU-WM-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Yuri Hoffman, Judge. Affirmed in part, reversed in part and remanded. Motion for sanctions denied.

Appellants Lee Tartre and Diane Armstrong appeal from a judgment denying their request for issuance of peremptory writs of administrative mandate, traditional mandate and prohibition, as well as injunctive and declaratory relief against respondents City of Poway and the Poway City Council (collectively City). Appellants are property owners who extended chain link fencing across a natural creek bed on their properties and sought

a determination that they were not required to submit an engineering study to City or apply for and obtain a floodplain development permit to extend their fencing. The trial court denied appellants' motion on grounds they had not met a "prerequisite" to any such relief in the form of denial of the permit under the Poway Municipal Code.

On appeal, appellants contend: (1) mandamus is available to them; (2) their as-applied, due process, and equal protection challenges to City's regulation became ripe when City denied their appeal and issued a resolution requiring them to either remove their fences or obtain a floodplain development permit; and (3) they demonstrated an actual controversy for purposes of maintaining a cause of action for declaratory relief.

We hold that appellants' claims that they need not apply for a floodplain permit, as well as their challenges relating to the alignment of the creek bed and floodplain, are ripe and that appellants exhausted their administrative remedies by appealing the floodplain administrator's decisions on those matters to the city council. We hold the trial court made a finding tantamount to a grant of traditional mandate in connection with their claims seeking to compel City to obtain base flood elevation data. To the extent appellants challenge City's refusal to issue them a permit, or seek to compel City to grant them a permit, those claims are not ripe for adjudication because at the time they filed the appeal, appellants had not applied for a permit. Finally, we hold as a matter of law that appellants are not entitled to a writ of prohibition. We affirm in part and reverse in part the judgment of the superior court, and remand the matter for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND¹

Appellants own neighboring properties in the City of Poway. In or about July 2007, they extended chain link fencing through a natural creek bed located on both properties. Several days later, City notified appellants by letter that the channel on which their fences crossed was within an approximately 100 foot wide "Zone A" floodplain identified by a federal insurance rate map (FIRM) issued by the Federal Emergency Management Agency (FEMA).² City stated that its municipal code required that a floodplain development permit be obtained prior to any construction or development within any area of special flood hazard. It advised appellants that their fence, which was constructed across the channel, encroached within the 100-year floodplain and could potentially catch debris and block flow, and that they were required to either remove the fence or apply for the permit accompanied by an engineering analysis showing there was no resulting adverse impact on upstream or downstream properties.

The parties exchanged letters and on September 11, 2007, the city engineer notified appellants that no later than October 1, 2007, they would have to apply for the permit and provide the engineering analysis or remove the fence. In response to appellants' ensuing requests, the city engineer then advised them, among other things, that a Zone A floodplain was a regulated floodplain that did not have water surface

¹ Some of the background facts are taken from the Poway City Council's uncontested factual findings.

² A FIRM is "the official map on which the [FEMA] or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community." (Poway Mun. Code (PMC), § 16.82.160.)

elevation data or an identified floodway, and that FEMA regulations required it to issue permits for all construction or other developments in all "A" zones. He informed appellants that City expected their engineer to use a detailed method of engineering analysis under its municipal code to determine the impact of their fence to the floodplain and adjacent properties, and provided appellants with a copy of the floodplain development permit application.

On October 1, 2007, appellants wrote to City's interim floodplain administrator, Patty Brindle, asking her to "verify the legitimacy" of the City engineer's floodplain development permit requirement. Making bullet-point factual assertions and legal arguments, they complained that City was misapplying its municipal code in an "arbitrary, capricious, and discriminatory" manner and asked Brindle to advise them how she was going to administer or enforce the PMC for purposes of their right to appeal. On November 7, 2007, Brindle responded point by point to appellants' letter. In part, she informed them that the fence qualified as a development, and stated: "The floodplain in question is defined by FEMA as an Approximate Zone A. Consequently, the flood limits and elevation are not precisely defined. However, based on a visual inspection and review of the approved subdivision map by the City Engineer, it is evident that the fence crossing the creek on your property is within the floodplain limits and requires a permit from the City to ensure that it does not obstruct floodwaters resulting in damage to the properties." She explained that because the floodplain in question was defined as an approximate Zone A floodplain, no engineering analysis had been done to determine the flood limits or flood elevation. She concluded that the PMC's floodplain development

permit requirements applied to their recently constructed fences, and they had a right to appeal that determination.

Appellants appealed Brindle's decision to the city council. City gave notice, its staff submitted an agenda report and recommended resolution, and in January 2008, a public hearing on the matter was held. City considered oral and written presentations from City staff, appellants, and various property owners in support of and opposition to staff's recommendation that the city council approve a resolution denying appellants' appeal and requiring them to either remove their fences or apply for a floodplain development permit.³

Thereafter, the city council adopted a resolution in accordance with staff's recommendation. The resolution was supported by factual findings and conclusions of law, including: Appellants' chain link fences constituted "[d]evelopment" within the meaning of the municipal code and were located across a creek and within the boundaries of an area of special flood hazard; the creek's and floodplain's alignment had changed

³ During the hearing, a staff member explained that City had floodplain maps showing that the creek on which the fencing crossed no longer was shown within the floodplain. He said: "[A]s shown on this . . . site plan, you'll see that the creek has departed from the actual floodplain and this was due – as a result of the grading of the subdivision back in the early '70s. The creek was realigned to allow for the lots to be developed, and it was never incorporated in with the floodplain. There had been at least two revisions to the floodplain map, but neither FEMA, nor City staff observed that this discrepancy existed. [¶] If you'll look at the – there are copies of the actual floodplain maps in your packet. They're very approximate and by looking it [*sic*] you wouldn't – it wouldn't be obvious that there is an error. We are aware of it now, and we will inform FEMA that we need to get this corrected. [¶] But the floodplain administrator has the authority by code to make the determination of the actual limits of the floodplain where there is a discrepancy between the map floodplain and actual conditions in the field."

since the current FIRM's creation; City's floodplain administrator was authorized to interpret the boundaries of special flood hazard areas when necessary; and City's requirement that appellants obtain a floodplain development permit and obtain an engineering analysis regarding the potential flood hazard posed by the fences was "reasonable under the circumstances."

Appellants petitioned the superior court for peremptory writs of administrative mandate, ordinary mandate, and prohibition, and also set out causes of action for injunctive and declaratory relief.⁴ They then filed a motion for the requested relief. In part, appellants argued they were entitled to traditional mandate to invalidate City's requirement for an engineering study because City, via its floodplain administrator, violated its mandatory ministerial duty under the PMC to obtain base flood elevation data, which duty could not be shifted to private persons. Appellants argued administrative mandate should issue because City acted in excess of jurisdiction by requiring them, and not others who had done construction in the area, to obtain an

⁴ By their petition, appellants sought to have City set aside its resolution and reconsider the appeal without requiring them to submit an engineering study and in light of evidence that the creek bed and floodplain were altered much earlier: at or around the time the subdivision was constructed in 1972. They sought traditional mandate to compel City to obtain at its expense all information necessary for it to review and make the determinations required for issuance of a permit. They also sought to enjoin City from requiring them to apply for a permit or submit an engineering study as part of any permit application, and asked that it be compelled to allow them to place their fencing without a permit or process their permit application without requiring submission of an engineering study. Finally, appellants asked for a judicial declaration that they were not required to apply for a permit or submit an engineering study, and that the creek's and floodplain's alignment had not changed since the current FIRM's creation, but were either unchanged, or changed at or about the time of the original subdivision's construction.

engineering analysis and by "disapproving [appellants'] permit" even though they had complied with other requirements; City's findings had no evidentiary support; and City's actions were based on a flawed interpretation of the municipal code and thus did not conform to the law. Appellants argued City's actions warranted injunctive relief because the actions violated their equal protection and due process rights, were biased, and would leave them irreparably injured. Appellants filed sworn declarations, and asked the trial court to take judicial notice of numerous letters, e-mails, and public records requests; various FIRM, development and land use maps; and photographs and other documents from official Web sites and outside agencies.

City opposed the motion, arguing appellants had not shown there were sufficient grounds to grant any of the requested relief. Specifically, it argued traditional mandate was not warranted because the floodplain administrator had no ministerial duty under the applicable provisions of the PMC to create an engineering study on appellants' behalf; administrative mandate was not warranted because substantial evidence supported the city council's determination to deny the appeal; and prohibition was not available absent any jurisdictional error. City further argued appellants had not demonstrated any need for a permanent injunction, asserting appellants had not raised their due process, equal protection and bias claims at the hearing and thus could not raise them in the superior court. It maintained appellants had not shown any entitlement to declaratory relief because they had not presented evidence disputing the floodplain administrator's determination that the floodplain had "shifted when the creek shifted with the construction of the neighborhood after FEMA had created the FIRM maps for the area."

The trial court denied appellants' motion and entered judgment. It ruled appellants had not met a "prerequisite" to their sought-after relief in the form of applying for a permit under PMC section 16.86.010: "Unless and until a permit is sought and denied, the requested relief is unavailable." The judgment further states: "Finally, the Court notes that [PMC section] 16.86.030 ('Duties and responsibilities of the Administrator'), places the duty and responsibility of obtaining any necessary base flood elevation data, which the City appears to interpret to include an engineering analysis, on Poway's Floodplain Administrator, as the section's title evidences." The court denied appellants' request for judicial notice. After City filed a notice of entry of judgment, appellants filed the present appeal.

DISCUSSION

I. *Standard of Review*

The parties frame the issues presented by this appeal as involving both "justiciability," encompassing matters of ripeness and standing, and exhaustion of administrative remedies. (See *City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 59 [the concept of justiciability involves the intertwined criteria of ripeness and standing]; 3 Witkin, *California Procedure* (5th ed. 2008) Actions, § 21, pp. 84-86.) Though the trial court did not expressly use these terms (and indeed City never raised these grounds in its opposition below), its reasoning in denying appellants' relief for failing to apply for a permit as a "prerequisite" evokes theories of exhaustion or ripeness.

Our determination of each of these questions is de novo. (*Citizens for Open Government v. City of Lodi* (2006) 144 Cal.App.4th 865, 873 [de novo standard of review

applies to legal question of whether doctrine of exhaustion of administrative remedies applies in a given case]; *Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1136 [same]; *Farm Sanctuary, Inc. v. Department of Food and Agriculture* (1998) 63 Cal.App.4th 495, 501-502 [issue of ripeness is one of law]; *County of San Diego v. State* (2008) 164 Cal.App.4th 580, 606 [whether a claim is ripe, i.e., whether it presents an actual controversy for purposes of declaratory relief—is a question of law that appellate court reviews de novo]; *Bilafer v. Bilafer* (2008) 161 Cal.App.4th 363, 368 [standing is a question of law subject to appellate court's independent review].)

II. Contentions

Appellants contend that by its ruling, the trial court fundamentally misconstrued the ripeness doctrine for purposes of (1) their as-applied challenge to City's floodplain ordinance; (2) their due process and equal protection claims; and (3) their cause of action for declaratory relief. Specifically, appellants maintain City's action—in the form of a city council resolution finding it is reasonable to require them to obtain an engineering analysis and a floodplain development permit—was sufficiently final and presented a concrete legal issue to fulfill ripeness requirements. They maintain they also showed that, by requiring them to remove their fences, the regulation has a sufficiently direct and immediate impact upon them, thus establishing a second element of ripeness. Finally, they argue that for purposes of declaratory relief, they presented actual controversies between the parties over whether the PMC requires them, or the floodplain administrator, to provide the engineering analysis and whether City exceeded its jurisdiction by

determining the exact boundaries of the floodplain without using actual grade and base flood elevations.

In response, City maintains appellants' case was not "[j]usticiable"—appellants did not establish standing, ripeness and exhaustion of administrative remedies—because they did not apply for the floodplain development permit. Describing these concepts as "interrelated," City argues the circumstances of this case are like those in *Del Oro Hills v. City of Oceanside* (1995) 31 Cal.App.4th 1060 (*Del Oro*), *San Mateo Coastal Landowners Ass'n v. County of San Mateo* (1995) 38 Cal.App.4th 523 (*San Mateo*), *Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 54 (*Smith*) and *Gilliland v. County of Los Angeles* (1981) 126 Cal.App.3d 610 (*Gilliland*). City characterizes these cases as involving legal challenges to certain local agency actions, land use initiatives or zoning laws that were held barred on grounds of lack of ripeness and/or failure to exhaust administrative remedies.

III. *City's Floodplain Management Regulations*

Our resolution of these issues, particularly whether appellants met ripeness and exhaustion requirements, is assisted by a brief summary of City's floodplain management regulations. City implemented its floodplain management regulations under legislative authorization to adopt regulations "designed to promote the public health, safety, and general welfare of its citizenry." (PMC § 16.80.010.) The regulations provide for "areas of special flood hazard" that are identified by FEMA in certain flood maps. (PMC

§ 16.84.020.)⁵ Under City's code, these maps (and any revisions or amendments) "are hereby adopted by reference and declared to be part of this subdivision." (*Ibid.*) Among its public safety and other purposes, the regulations are intended to minimize damage to public facilities located in areas of special flood hazard, and ensure that persons occupying the areas of special flood hazard "assume responsibility for their actions." (PMC § 16.80.030(E), (G).) To accomplish its purposes, the regulations contain provisions to, among other things, "[p]revent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas." (PMC § 16.80.040(E).)

A development permit "shall be obtained before any construction or development begins within any area of special flood hazard established in PMC [section] 16.84.020."

⁵ PMC section 16.84.020, entitled, "Basis for establishing the areas of special flood hazard," provides: "The areas of special flood hazard identified by the Federal Insurance Administration of the [FEMA] in the Flood Insurance Study (FIS) and accompanying Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this subdivision. This FIS and attendant mapping is the minimum area of applicability of this division and may be supplemented by studies for other areas which allow implementation of this division and which are recommended to the City Council by the Floodplain Administrator. The study, FIRMs and FBFMs are on file at 13325 Civic Center Drive, Poway, California." A "[s]pecial flood hazard area (SFHA)" means an area in the floodplain subject to a one percent or greater chance of flooding in any given year. It is shown on [a Flood Hazard Boundary Map] or FIRM as zone A, AO, A1-A30, AE, A99 or AH." (PMC § 16.82.530.) The Code separately defines a "floodplain" or "flood-prone area" as "any land susceptible to being inundated by water from any source (see definition of 'flood, flooding, or floodwater')." (PMC § 16.82.210.)

(PMC § 16.86.010.⁶) "Development" is defined as "any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials." (PMC § 16.82.100.)

City's code provides that the floodplain administrator is responsible for making "interpretations where needed as to the exact location of the boundaries of the areas of special flood hazard." (PMC § 16.86.030(E).) Further, "[w]here there appears to be a conflict between a mapped boundary and actual field conditions, grade and base flood elevations shall be used to determine the boundaries of the special flood hazard area." (*Ibid.*) A person who contests the location of the boundary "shall be given a reasonable opportunity to appeal the interpretation" (*Ibid.*)

PMC section 16.86.040 provides: "The City Council of the City of Poway shall hear and decide appeals when it is alleged there is an error in any requirement, decision,

⁶ More fully, the version of PMC section 16.86.10 in the administrative record provides: "A development permit shall be obtained before any construction or development begins within any area of special flood hazard established in PMC [section] 16.84.020. Application for a development permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing." (PMC § 16.86.010.) The section specifically requires the applicant to provide foundation design detail, proposed elevations, various certifications, a "[d]escription of the extent to which any watercourses will be altered or relocated as a result of proposed development" (PMC § 16.86.010(E)), and a site plan including, among other things, spot ground elevations for proposed structures, proposed locations of sewers and utilities, and "[i]f available, the base flood elevation from the Flood Insurance Study and/or Flood Insurance Rate Map[.]" (PMC § 16.86.010(A)(3).)

or determination made by the Floodplain Administrator in the enforcement or administration of this division."

IV. *Appellants' Challenge to City's Imposition of the Floodplain Development Permit Requirements is Ripe for Judicial Review*

Contrary to City's suggestion, in this context, the question of ripeness is distinct from that of exhaustion of administrative remedies. (*Long Beach Equities, Inc. v. County of Ventura* (1991) 231 Cal.App.3d 1016, 1032; *Breaux v. Agricultural Labor Relations Bd.* (1990) 217 Cal.App.3d 730, 741-742 [explaining the "distinguishable" doctrines]; see also *California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1484-1489 [treating "finality" (ripeness) and exhaustion as separate "prerequisites"].) "The test [for ripeness] is *not* one of exhaustion of a particular administrative remedy— whether the developer has exhausted all administrative appeals regarding a particular application." (*Long Beach Equities, supra*, at p. 1032.)

" 'The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion. . . . [T]he ripeness doctrine is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy.' " (*Phelps v. State Water Resources Control Bd.* (2007) 157 Cal.App.4th 89, 103, quoting *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170; see also *O.W.L. Foundation v. City*

of Rohnert Park (2008) 168 Cal.App.4th 568, 584 (*OWL Foundation*).) A dispute is ripe for review when " 'the facts have sufficiently congealed to permit an intelligent and useful decision to be made.' "[Citation.]" (*OWL Foundation*, at p. 584, quoting *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 885.)

Thus, ripeness looks to whether the nature of the challenge is abstract, hypothetical or speculative, versus one that is actual and concrete. For example, "[w]here an agency applies regulations to a party's injury, a sufficient controversy exists to satisfy the ripeness requirement." (*Phelps v. State Water Resources Control Bd.*, *supra*, 157 Cal.App.4th at p. 103; see also *Coral Construction, Inc. v. City and County of San Francisco* (2004) 116 Cal.App.4th 6, 26 [ripeness requirements were satisfied by contractor's action seeking to enjoin a local affirmative action ordinance concerning bidding on public contracts that was applied to one of the contractor's past bids.]) In *Phelps*, the appellate court held that the plaintiffs' claims had ripened (and were thus time-barred) when a state board imposed upon them a diversion restriction in their permits and licenses. (*Phelps*, 157 Cal.App.4th at pp. 101-103.) The inclusion of the term aggrieved plaintiffs because it gave the board authority to order curtailment of water diversions, and the Water Code allowed judicial review for any party aggrieved by "any decision or order" of the board. (*Id.* at pp. 98, 103.)

The ripeness inquiry also looks to the finality of an administrative decision. (*OWL Foundation, supra*, 168 Cal.App.4th at p. 584 [finality requirement is an outgrowth of the ripeness requirement].) An administrative decision " 'attains the requisite administrative

finality when the agency has exhausted its jurisdiction and possesses "no further power to reconsider or rehear the claim." ' [Citation.] Finality may be defined either expressly in the statutes governing the administrative process or it may be determined from the framework in the statutory scheme. [Citation.] Until a public agency makes a final decision, the matter is not ripe for judicial review." (*California Water Impact Network v. Newhall County Water Dist.*, *supra*, 161 Cal.App.4th at p. 1485.)

City's challenge focuses solely on the fact appellants have not applied for a development permit. It maintains that, regardless of their theory, their as-applied challenge to the floodplain management regulations does not present a concrete, present or actual dispute without a permit application. Of course, appellants—taking the position their property did not lie within the boundaries of the special flood hazard—had already constructed the fencing on their respective properties *without* a permit. Under the circumstances, the precise nature and extent of their development was known to City.

Thus, as City recognizes,⁷ the main issue at stake in this case concerns a dispute over the location of the special flood hazard area boundary, a *threshold factual determination* conditioning imposition of the floodplain permit requirement. Under the framework of City's code, a floodplain permit is not required if the development is not within a special flood hazard area, the exact boundaries of which are to be determined by

⁷ City argues "[t]he gravamen of [appellants'] claim is that their property is not in a floodplain and is not subject to the floodplain ordinance." The permit requirement, however, is not dependent on whether appellants' property is in a *floodplain*; the critical question is whether their fences are located in an area of *special flood hazard*, an area with different criteria under the PMC.

the floodplain administrator. (PMC §§ 16.86.010, 16.86.030(E).) Appellants asked City's floodplain administrator to make this discrete determination. The floodplain administrator's determination of that issue—an "interpretation[]" of the exact boundary of the special flood hazard area (see PMC § 16.86.030(E))—was a "requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this division" specifically made appealable to the city council. (PMC § 16.86.040.) Appellants indeed sought review in the city council of the floodplain administrator's boundary determination, and that decision, following its adoption within City's resolution, is final in all essential respects.

By their writ petition and complaint, appellants challenge the reasonableness of the floodplain permit and engineering study requirements on grounds (1) it was the floodplain administrator's burden to obtain the required engineering data and (2) there was no evidence of any realignment of the creek and floodplain since the creation of the current FIRM in 1997. The latter argument, in effect, claims *exemption* from City's permit requirement on grounds the property on which their fences were located is not within an "area of special flood hazard" within the meaning of PMC section 16.86.010.

The controversy presented by this aspect of appellants' petition—whether or not the fences are within the boundaries of a special flood hazard, necessitating a development permit—was not abstract or hypothetical, nor was it dependent on events that have not yet come to pass. In our view, the facts concerning appellants' claim of exemption from the floodplain permit requirements " ' "have sufficiently congealed to permit an intelligent and useful decision to be made." ' " (*OWL Foundation, supra*, 168

Cal.App.4th at p. 584.) Thus, the controversy concerning the threshold application of those requirements to appellants' property has sufficient finality for purposes of ripeness.

All of these circumstances distinguish this matter from *Del Oro, San Mateo, Smith*, and *Gilliland*, the cases relied upon by City, which involve as applied regulatory takings challenges (or challenges viewed by the court as as-applied challenges, see *San Mateo, supra*, 38 Cal.App.4th 523, 547), under different statutory or regulatory frameworks, by plaintiffs who had not yet undertaken their sought-after development. In a regulatory takings matter, ripeness requires "(1) that 'the government entity charged with implement[ation of] the regulations has reached a final decision regarding the application of the regulations to the property at issue' [citation] and (2) that the claimant has sought and has been denied 'compensation through the procedures the State has provided for doing so.' " (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 255, fn. 29, quoting *Williamson County Reg'l Planning Comm'n v. Hamilton Bank* (1985) 473 U.S. 172, 186, 194 (*Williamson*).) Thus, a developer that challenges land use regulations as a regulatory taking "must establish that it has submitted at least one meaningful application for a development project which has been thoroughly rejected, and that it has prosecuted at least one meaningful application for a zoning variance, *or something similar*, which has been finally denied. [Citations.] Informal or tentative development proposals are insufficient to meet these tests." (*Long Beach Equities, Inc. v. County of Ventura, supra*, 231 Cal.App.3d at p. 1032, italics added.)

In regulatory takings circumstances, that requirement is necessary because "a 'court cannot determine whether a regulation goes 'too far' [so as to constitute a taking]

unless it knows how far the regulation goes." ' ' ' (*Shaw v. County of Santa Cruz, supra*, 170 Cal.App.4th at p. 255, fn. 29, quoting *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 622; see also *Suitum v. Tahoe Regional Planning Agency* (1997) 520 U.S. 725, 734 [final decision ripeness requirement in regulatory takings cases follows from the principle that only a regulation that goes to far results in a taking under the Fifth Amendment; *MacDonald, Sommer & Frates v. County of Yolo et al.* (1986) 477 U.S. 340, 348 ["essential prerequisite" to ripeness of federal regulatory takings is a "final and authoritative determination of the type and intensity of development legally permitted on subject property"].) In the takings context, until a property owner has obtained a final decision regarding application of the land use regulations, " ' ' "it is impossible to tell whether the land retains[s] any reasonable beneficial use or whether [existing] expectation interests ha[ve] been destroyed." ' ' ' (*Smith, supra*, 225 Cal.App.3d at p. 46; see also *Charles A. Pratt Const. Co., Inc. v. California Coastal Com'n* (2008) 162 Cal.App.4th 1068, 1080-1081.)

The appellate court in *Del Oro*, for example, found the property owners' takings claims barred under ripeness grounds (as well as lack of exhaustion of administrative remedies) for the absence of a final decision on a specific development plan; the developer could have sought approval of a tentative subdivision map, allocation or other ruling under the land use initiative at issue, but it did not and it was not possible to assess the degree of remaining beneficial use without a submitted permit or allocation to develop, or a request for a variance. (See *Del Oro, supra*, 31 Cal.App.4th at pp. 1065, 1077.) In *Smith, supra*, 225 Cal.App.3d 38, plaintiffs alleged in support of an inverse

condemnation claim that they were unable to develop three lots because the city had asserted technical objections concerning lot descriptions and set-back requirements. (*Id.* at pp. 44, 46.) The appellate court held—on the city's demurrer—that such a dispute over descriptions and set-backs was not a deprivation of substantially all use of the property, a necessary element for purposes of inverse condemnation. (*Id.* at p. 46.) The court further held the plaintiffs' allegations did not show the permitted use of their property had been finally decided and thus plaintiffs' cross-complaint did not state a ripe claim for a regulatory taking. (*Id.* at p. 46.) As we explain below in connection with the exhaustion of administrative remedies doctrine, *Gilliland* does not address ripeness, but even assuming it does, its discussion is dicta.

Appellants here do not assert that their property has been taken without just compensation. These authorities—involving regulatory takings claims decided under different statutory and regulatory frameworks—do not control here. Rather, we assess ripeness here within the framework of City's floodplain management regulations and in view of the fact that (1) appellants' fences are in place and City is fully cognizant of the extent of their sought-after development; (2) appellants asserted a claim of exemption from floodplain requirements under the PMC to the floodplain administrator; and (3) appellants challenged the administrator's special flood hazard area boundary determination by an appeal to the city council. City reached a final, definitive decision as to the application of its floodplain management ordinance to their existing fences, which would require appellants to comply with stringent permit requirements (a site plan etc.) resulting in concrete and immediate hardship.

Our conclusion is further compelled by the fact the PMC expressly authorizes an appeal from the floodplain administrator's boundary determination. Thus, similar to cases where a developer asserts a vested right to develop land without a permit, had appellants applied for a permit rather than challenged the floodplain administrator's boundary determination, they arguably could have waived their claim of exception from the permit requirements. (See, e.g., *LT-WR, L.L.C. v. California Coastal Com'n* (2007) 152 Cal.App.4th 770, 785 [property owner who claims exemption from Coastal Zone Conservation Act permit requirements by reason of a vested right to develop property must claim exemption on that basis; "[w]here the developer fails to seek such a determination but instead elects to apply only for a permit, he cannot later assert the existence of a vested right to development, i.e., the developer waives his right to claim that a vested right exists"], citing *Davis v. California Coastal Zone Conservation Com.* (1976) 57 Cal.App.3d 700, 708 & *State of California v. Superior Court* (1974) 12 Cal.3d 237, 248-250, 252.)

Our holding as to ripeness extends to appellants' declaratory relief cause of action, which asks for judicial declarations as to whether appellants are required to apply for and obtain a permit for the placement of their fencing, and whether the alignment of the creek and floodplain have changed. These matters present actual and present, not advisory, controversies concerning the special flood hazard area boundaries and City's resulting imposition of the floodplain development permit requirements. (See *City of Santa Monica v. Stewart, supra*, 126 Cal.App.4th at pp. 63-64 [describing ripeness test for declaratory relief].)

Our holding does not extend to appellants' petition to the extent it challenges City's failure to *grant* them a floodplain development permit. Such a claim would require plaintiffs to actually apply for the permit as a prerequisite to making such a claim.

As for appellants' claims of equal protection and due process, we agree with City that appellants did not assert theories of equal protection or due process violations before the city council or in their petition, and thus have waived those claims. (*Southern Cal. Underground Contractors, Inc. v. City of San Diego* (2003) 108 Cal.App.4th 533, 549 ["[a]n issue not raised at an administrative hearing, including a claim of bias, may not be raised in later judicial proceedings"], citing *Anton v. San Antonio Community Hospital* (1977) 19 Cal.3d 802, 826 [due process claim was not raised to committee or board of directors at review hearing], limited on other grounds in *Mileikowsky v. West Hills Hosp. and Medical Center* (2009) 45 Cal.4th 1259, 1274, fn. 7.)

V. *Standing*

In general " '[o]ne who invokes the judicial process does not have "standing" if he, or those whom he properly represents, does not have a real interest in the ultimate adjudication because the actor has neither suffered nor is about to suffer any injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented.' " (3 Witkin, Cal. Procedure (5th ed. 2008) Actions, § 21, p. 84; see also *Kane v. Redevelopment Agency* (1986) 179 Cal.App.3d 899, 903 [" 'One who is adversely affected in fact by governmental action has standing to challenge its legality, and one who is not adversely affected in fact lacks standing' "], italics omitted.) A party petitioning for a writ of mandate must be "beneficially interested" to have standing. (See

Code Civ. Proc., §§ 1086, 1069 ["The application must be made on the verified petition of the party beneficially interested"].) That is, the party must have " ' "some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." ' " (*Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 479.) The standard "is equivalent to the federal 'injury in fact' test, which requires a party to prove by a preponderance of the evidence that it has suffered 'an invasion of a legally protected interest that is "(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." ' " (*Associated Builders and Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 362; see also *People ex rel. Department of Conservation v. El Dorado County* (2005) 36 Cal.4th 971, 986.)⁸

There can be no serious argument that City's decision to adopt the floodplain administrator's boundary interpretation directly affects appellants, whose fencing is claimed to be subject to the floodplain management ordinance's development permit requirements. They have a sufficient concrete and particularized interest that is not conjectural or hypothetical, and thus have standing to challenge City's imposition of its floodplain permit requirements.

⁸ City's reliance on the federal "case or controversy" principle of standing is misplaced. There is no such requirement in our state Constitution. (*Grosset v. Wenaas* (2008) 42 Cal.4th 1100, 1117, fn. 13; see *Jasmine Networks, Inc. v. Superior Court* (2009) 180 Cal.App.4th 980, 990; *Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 29; *National Paint & Coatings Assn. v. State of California* (1997) 58 Cal.App.4th 753, 761.)

VI. *Appellants Exhausted Their Administrative Remedies by Obtaining a City Council Resolution Pertaining to the Boundaries of the Special Flood Hazard Area*

A. *Legal Principles*

The general rule is that "[a] party aggrieved by the application of a[n] . . . ordinance must invoke and exhaust the administrative remedies provided thereby before he may resort to the courts for relief." (*Metcalf v. County of Los Angeles* (1944) 24 Cal.2d 267, 269.) " 'When administrative machinery exists for the resolution of differences, the courts will not act until such administrative procedures are fully utilized and exhausted. To do so would be in excess of their jurisdiction.' " (*Leff v. City of Monterey Park* (1990) 218 Cal.App.3d 674, 680.) The rule is applicable whether the petitioner is seeking ordinary mandamus or administrative mandamus. (*Ibid.*) Accordingly, exhaustion is required when a claim is cognizable in the first instance by an administrative agency alone; judicial interference is withheld until the administrative process has run its course. (*Jonathan Neil & Associates, Inc. v. Jones* (2004) 33 Cal.4th 917, 930.) The rule is viewed with favor because it affords the public agency an opportunity to receive and respond to articulated factual issues and legal theories before its actions are subjected to judicial review, and, among other things, facilitates the development of a complete record that draws on administrative expertise and promotes judicial efficiency. (*Leff v. City of Monterey Park, supra*, at p. 681.)

In *Jonathan Neil & Associates, Inc. v. Jones* (2004) 33 Cal.4th 917, the California Supreme Court explained the exhaustion of administrative remedies doctrine in some detail. It "consists of at least three distinct strands, justified by somewhat different

rationales. First, when a statute and lawful regulations pursuant thereto establish a quasi-judicial administrative tribunal to adjudicate statutory remedies, the aggrieved party is generally required to initially resort to that tribunal and to exhaust its appellate procedure. 'As Witkin explains: "The administrative tribunal is created by law to adjudicate the issue sought to be presented to the court. The claim or 'cause of action' is within the special jurisdiction of the administrative tribunal, and the courts may act only to *review* the final administrative determination. If a court allowed a suit to be maintained prior to such final determination, it would be interfering with the subject matter jurisdiction of another tribunal." ' [Citations.]

"Second, the exhaustion doctrine has been applied when a private or public organization has provided an internal remedy. [Citation.] Whereas the exhaustion requirement in the first category is based on a discernment of legislative intent, the second category is more a matter of judicial policy: 'The reason for the exhaustion requirement in this context is plain. . . . "[W]e believe as a matter of policy that the association itself should in the first instance pass on the merits of an individual's application rather than shift this burden to the courts. For courts to undertake the task 'routinely in every such case constitutes both an intrusion into the internal affairs of [private associations] and an unwise burden on judicial administration of the courts.' [Citation.]" ' [Citation.] In this context, the 'exhaustion of administrative remedies furthers a number of important societal and governmental interests, including: (1) bolstering administrative autonomy; (2) permitting the agency to resolve factual issues,

apply its expertise and exercise statutorily delegated remedies; (3) mitigating damages; and (4) promoting judicial economy.' [Citation.]

"Third, courts have required 'exhaustion of "external" administrative remedies in a variety of public contexts.' [Citation.] In such cases, although the legislative intent to resort in the first instance to administrative remedies is not entirely clear, courts have required exhaustion when they 'have expressly or implicitly determined that the administrative agency possesses a specialized and specific body of expertise in a field that particularly equips it to handle the subject matter of the dispute.'" (*Jonathan Neil & Associates, Inc. v. Jones, supra*, 33 Cal.4th at pp. 930-931.)

B. Appellants Complied with the Internal Remedies Provided in City's Code and Obtained a City Council Resolution on the Threshold Issue of the Special Flood Hazard Area Boundary

Here, City does not discuss the aforementioned exhaustion requirements, or apply them in any depth to the present case. It acknowledges that "[a]n unusual feature of [its] code is that it allows any person to appeal any decision of the floodplain administrator to the City Council." Though it correctly explains that exhaustion requires a litigant to properly use all steps that the agency provides so that the agency addresses the issues on the merits, it does not explain why City's internal procedures were not satisfied by appellants' appeal to the city council, which resulted in a resolution subjecting their fences to the floodplain permit requirements. City only argues, under the authority of *Gilliland, supra*, 126 Cal.App.3d 610, that appellants' case does not become "justiciable"

merely because its code allows for an internal review of any decision of the floodplain administrator.

Gilliland, however, says nothing about exhaustion of administrative remedies. In *Gilliland, supra*, 126 Cal.App.3d 610, the plaintiffs sued the County of Los Angeles for inverse condemnation (with a prayer for declaratory and injunctive relief) after the county board of supervisors, on appeal from a decision of the county regional planning commission, denied their request to rezone their property from an agricultural use to a commercial planned development zone. (*Id.* at pp. 612-614.) The county successfully demurred to the complaint, and the Court of Appeal affirmed on grounds the plaintiffs had not alleged facts that constituted an actual taking of their property. (*Id.* at p. 617.) In particular, the court observed that plaintiffs had not alleged that the zoning ordinance had deprived them of substantially all use of [their] land, and thus did not "on its face take plaintiffs' property without just compensation." (*Id.* at p. 616.) It held the particular zoning regulations constituted an exercise of the county's police power to protect local residents from the adverse effects of urbanization in specifying low density where the noise level was high due to a nearby airport. (*Id.* at p. 616.) The appellate court, in dicta, continued to state that the plaintiffs had not shown inverse condemnation was available or mandamus was the sole means of relief. (*Ibid.*) Plaintiffs did not show grounds for declaratory relief because they had not alleged they had submitted a plan to use or improve their property according to the manner permitted by the zoning regulations, and thus, there was no "concrete controversy regarding the application of the specific zoning provisions." (*Ibid.*) Nor had they pleaded any basis for mandamus because they alleged

they sought a zone change rather than a building permit or variance, and mandamus was not appropriate for zoning, a legislative act. (*Id.* at pp. 616-617.)

In *Gilliland*, the plaintiffs undertook the available administrative remedies by appealing to the county board of supervisors, and thus there is no indication the parties raised exhaustion requirements in connection with the county's general demurrer in that case. In short, the *Gilliland* court had no occasion to address exhaustion requirements. We decline to interpret *Gilliland*'s discussion as to the presence of a concrete controversy for purposes of declaratory relief as a statement on exhaustion or even justiciability, nor will we extend its dicta to the circumstances of this case.

Here, appellants did invoke City's internal review procedures set forth in City's code. They sought a specific determination about the special flood hazard boundary that would exempt them from floodplain permit requirements before the administrator having discretion to make such determinations in the first instance, and then appealed that decision to the city council. This is sufficient to exhaust administrative remedies. (See *Metcalf v. County of Los Angeles*, *supra*, 24 Cal.2d at p. 270 [before plaintiffs can make an as-applied challenge to a statute or ordinance, he "must apply to the zoning authorities for an exception or variance under the act"; the administrative process is incomplete until such an application is made and acted upon]; e.g., *South Coast Regional Commission v. Gordon* (1977) 18 Cal.3d 832.) In *South Coast*, the plaintiff commission sued a property owner who had constructed a building in a coastal zone without a permit, alleging the construction was in violation of the Coastal Zone Conservation Act. (*South Coast Regional Commission v. Gordon*, *supra*, at pp. 833-834.) The property owner had

answered the commission's complaint and raised as a defense his exemption from the permit requirement on grounds he had a vested right to complete the structures. (*Id.* at p. 834.) However, the property owner had not made a claim of exemption from the permit requirement to the regional commission or the statewide commission, to which the regional commission's decision was appealable under coastal commission regulations. (*Id.* at pp. 834-835.)

On appeal from a summary judgment in the property owner's favor, the California Supreme Court, following its decision in *State of California v. Superior Court*, *supra*, 12 Cal.3d 237, held that the owner was required to present his exemption claim to the commissioner as a condition of raising the claim in the trial court. (*South Coast Regional Commission v. Gordon*, *supra*, 18 Cal.3d at pp. 834-835.) It pointed out "there have been no administrative proceedings regarding exemption because Gordon has failed to make application to the commission, although *Veta* compels him to do so as a predicate to a determination of that claim by a court. Nor is Gordon challenging the validity of the statutes or regulations under which the commission operates. Instead, he attempts to raise by way of defense a matter which is initially committed to the commission's determination, and which he has not presented to that agency. The situation is analogous to one in which a defendant in an action alleging a violation of zoning laws asserts by way of defense that he is entitled to a variance, even though he did not apply to the appropriate body for a variance, as required by law." (*South Coast Regional Commission v. Gordon*, at p. 836.)

Unlike the plaintiff owner in *South Coast*, appellants here allowed the administrative process to " 'run its course' " before seeking judicial intervention. (*California Water Impact Network v. Newhall County Water Dist.*, *supra*, 161 Cal.App.4th at p. 1489.) They presented their claim of exemption to both the floodplain administrator and then the city council, giving City an opportunity to respond to their articulated legal and factual theories in support of their position. In short, they exhausted their administrative remedies.

VII. *The Trial Court's Finding Concerning the Floodplain Administrator's Duty to Obtain Base Flood Elevation Data is Tantamount to a Grant of Traditional Mandate*

PMC section 16.86.030, entitled Duties and responsibilities of the Administrator, provides: "The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, . . . [¶] . . . [¶] B. Review, Use, and Development of Other Base Flood Data. [¶] 1. When base flood elevation data has not been provided in accordance with PMC 16.84.020, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal or State agency, or other source, in order to administer Chapter 16.88 PMC. Any such information shall be submitted to the City Council for adoption" The section further provides that if no base flood elevation data is available from a Federal or State agency or other source, then a base flood elevation shall be obtained using either "simplified" or "detailed" engineering methods identified in specified FEMA publications. (PMC § 16.86.030(B)(1), (2).) As noted above and relevant here, the PMC requires the floodplain administrator to use base flood data in determining the "exact location of the

boundaries of the areas of special flood hazard," particularly when reconciling conflicts between a mapped boundary and actual field conditions. (PMC § 16.86.030(E).)

In its judgment, the trial court made an express finding that PMC section 16.86.030 placed the duty and responsibility on Poway's Floodplain Administrator to obtain any necessary base flood elevation data, which the City had interpreted to include an engineering analysis. However, it denied appellants petition for traditional mandate on grounds of ripeness and exhaustion of administrative remedies, a decision that we reverse as explained above. We asked the parties to brief the effect of the court's finding and whether it is binding upon them.⁹

Having reviewed the briefing and limiting our discussion to the floodplain administrator's special flood hazard area boundary determinations,¹⁰ we conclude the trial court's finding was tantamount to a grant of traditional mandate based on its interpretation of the PMC. A traditional writ of mandate is properly issued "to compel the performance of an act which the law specifically enjoins. . . ." (Code Civ. Proc.,

⁹ In part, City argued the trial court's finding was unnecessary to its determination of justiciability and was thus unbinding dicta. We disagree with City's argument. Dicta is a statement or general observation that is not germane or necessary to an appellate decision. (See 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 509, pp. 572-573.) It is a concept related to stare decisis and the precedential force of appellate decisions. (See *ibid.*) City provides no authority applying the principle to a trial court ruling. We decline to extend it here.

¹⁰ We express no opinion on whether the PMC authorizes the floodplain administrator to require a developer or other person who has submitted a floodplain development permit application to develop base flood elevation data when such data is not available from a federal, state or other source.

§ 1085, subd. (a); see *V.S. v. Allenby* (2008) 169 Cal.App.4th 665, 670; *Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 752.) It applies to review an agency's action if the action is compelled by law and does not involve a factual determination by the agency. (*Harris Transportation Co. v. Air Resources Board* (1995) 32 Cal.App.4th 1472, 1480-1481; *Morton v. Board of Registered Nursing* (1991) 235 Cal.App.3d 1560, 1566.) "Two basic requirements are essential to the issuance of the writ: (1) A clear, present and usually ministerial duty upon the part of the respondent [citations]; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty." (*People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 491; *V.S. v. Allenby*, 169 Cal.App.4th at p. 670.) "The trial court's inquiry in a traditional mandamus proceeding is limited to whether the local agency's action was arbitrary, capricious, or entirely without evidentiary support, and whether it failed to conform to procedures required by law." (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1004.) Where, as here, a petition challenges both an agency's failure to perform an act required by law and the conduct or result of an administrative hearing, it is not inconsistent to award relief under both sections 1094.5 and 1085. (See *Conlan v. Bonta*, 102 Cal.App.4th at p. 752.)

City points out that the above-summarized provision of the PMC allows the floodplain administrator to obtain base flood elevation data from not just federal or state agencies, but also from any "other source," including permit applicants such as appellants. We independently interpret the PMC. (*Hard v. California State Employees Assn.* (2002) 96 Cal.App.4th 708, 711; *MHC Operating Limited Partnership v. City of*

San Jose (2003) 106 Cal.App.4th 204, 219.) Doing so, we disagree with City's construction based on (1) the PMC's purpose and (2) use of the qualifier "available." The overall purpose of this section of the PMC is plainly to identify the floodplain administrator's responsibilities. The various headings broadly categorize the floodplain administrator's duties as "Permit Review" (PMC § 16.86.030(A), "Review, Use, and *Development of Other Base Flood Data*" (§ 16.86.030(B), italics added), "Notification of Other Agencies" (§ 16.86.030(C)), "Documentation of Floodplain Development" (§ 16.86.030(D)), and "Map Determinations" (§ 16.86.030(E)). Nothing in the PMC indicates that, in exercising his or her obligation to determine special flood hazard area boundaries, the floodplain administrator may delegate or transfer to a third party the obligation to obtain or develop base flood data.

Further, the PMC's provision permitting the floodplain administrator to obtain data from "other sources" is qualified by the word *available*. The Merriam-Webster's Collegiate Dictionary defines "available" as "present or ready for immediate use." (Merriam-Webster's Collegiate Dict. (11th ed. 2006) p. 84, col. 1.) In the context of the floodplain administrator's boundary determinations, we would ignore this statutory qualifier if we were to interpret the PMC as including appellants (or others seeking exemption from floodplain permit requirements based on the boundary location) as a source of base flood data, because such persons generally do not have such data available for immediate use. Rather, the PMC's plain and commonsense meaning imposes the duty and obligation on the *floodplain administrator* to obtain, review and utilize available base flood elevation data in making boundary determinations, and if unavailable, obtain or

develop it via specified methods. We hold the floodplain administrator's duty to obtain or develop base flood elevation data for the purpose of determining special flood hazard area boundary determinations is a duty compelled by the PMC, that City had no discretion on its part with respect to that determination, and that traditional mandate is the appropriate vehicle to compel the floodplain administrator to obtain or develop that data for that purpose.

VIII. *Request for Writ of Prohibition*

As a matter of law, appellants are not entitled to a writ of prohibition, which is limited to restraint of a threatened exercise of *judicial power* in excess of jurisdiction. (Code Civ. Proc., § 1102; *Aronoff v. Franchise Tax Bd.* (1963) 60 Cal.2d 177, 181.) It is not available here, because a local agency cannot exercise judicial powers. (See *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 42-44 & fn 15; see also *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1093-1094; *Aronoff*, at pp. 181-182.)

IX. *Judicial Notice*

We deny City's request on appeal for judicial notice of portions of a FEMA manual concerning National Flood Insurance Program Floodplain Management Requirements. FEMA's manual overviews certain National Flood Insurance Program requirements and some miscellaneous federal regulations. To the extent the manual reflects FEMA's interpretation of those federal regulations, it is not necessary, helpful or relevant to an interpretation of City's PMC. (See *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of

materials that are not "necessary, helpful, or relevant"].) Because we do not reach the substantive merits of appellants' petition but rather remand the matter to the trial court for further proceedings, we need not address appellants' cursory argument that the trial court erred by denying their request for judicial notice, as appellants will have an opportunity to renew their request in the trial court.

X. Request for Sanctions

By motion, City requests that we sanction appellants for filing an incomplete appellants' appendix under California Rules of Court, rule 8.124 (rule 8.124). Specifically City points out that appellants left out City's answer to appellants' complaint and the moving and opposing papers accompanying appellants' motion for writ relief, as well as its opposition to appellants' request for judicial notice. It asks this court to order appellants to comply with rule 8.124, and impose reasonable monetary sanctions in the sum of \$825 for the attorney hours expended by City in "reviewing the [appellants'] appendix, researching the requirements for an appendix, researching the proper remedy for violating these requirements, and preparing this motion and accompanying documents."

We decline to impose the requested sanctions. While appellants' transgressions were not trivial, City filed the missing papers in its respondents' appendix, and thus the absence of the documents did not cause prejudice, confusion, or additional work for the court or clerk's office. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 989.)

XI. *Matters on Remand*

In view of our holding as to ripeness, standing and exhaustion of remedies, we reverse the judgment and remand the matter for the trial court to consider the merits of appellants' petition, with the exception of appellants' request for a writ of prohibition and any claims by appellants seeking to compel City to grant them a permit. We express no opinion on the merits, or the appropriate method of review to which they are entitled, with the exception of the trial court's base flood data finding. As to that finding, the trial court shall, following its consideration of the petition on the merits, issue a peremptory writ of mandate compelling the floodplain administrator to obtain such data in making special hazard flood area boundary determinations.

As for appellants' cause of action for declaratory relief, we point out that "[w]hen a remedy has been designated by the Legislature to review an administrative action, declaratory relief is unavailable." (*County of Los Angeles v. California State Water Resources Control Bd.* (2006) 143 Cal.App.4th 985, 1002, citing *State of California v. Superior Court*, *supra*, 12 Cal.3d at p. 249 & *Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 546.) The trial court should determine whether appellants are entitled to declaratory relief based on its decision as to the appropriate method of review.

DISPOSITION

The judgment is affirmed as to appellants' petition for a writ of prohibition. Otherwise, the judgment is reversed and the matter remanded to the trial court for further proceedings consistent with this opinion. The parties shall bear their own costs.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

McINTYRE, J.